

SENATE MOTION

MR. PRESIDENT:

I move that Engrossed House Bill 1116 be amended to read as follows:

- 1 Page 1, between the enacting clause and line, begin a new paragraph
- 2 and insert:
- 3 "SECTION 1. IC 8-1-2-84.1 IS ADDED TO THE INDIANA CODE
- 4 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 5 1, 2002]: **Sec. 84.1. (a) Notwithstanding sections 83 and 84 of this**
- 6 **chapter, this section applies to a transaction involving a:**
- 7 **(1) merger, consolidation, reorganization, or union involving**
- 8 **an energy company; or**
- 9 **(2) tender offer or contract for the purchase, acquisition,**
- 10 **assignment, or transfer of stock of an energy company.**
- 11 **(b) As used in this section, "energy company" means an energy**
- 12 **utility or an energy utility holding company.**
- 13 **(c) As used in this section, "energy utility" means an energy**
- 14 **utility (as defined in IC 8-1-2.5-2) that provides retail energy**
- 15 **service to more than forty thousand (40,000) retail electric or gas**
- 16 **customers in Indiana.**
- 17 **(d) As used in this section, "energy utility holding company"**
- 18 **means a corporation, company, partnership, or limited liability**
- 19 **company that wholly owns an energy utility.**
- 20 **(e) As used in this section, "person" means an individual, a**
- 21 **corporation, a partnership, a limited liability company, an**
- 22 **association, or another entity organized under the laws of any**
- 23 **state. The term includes state, local, and federal agencies.**
- 24 **(f) As used in this section, "retail energy service" has the**
- 25 **meaning set forth in IC 8-1-2.5-3, regardless of whether the service**
- 26 **is provided under IC 8-1-2.5 or another provision of this article.**
- 27 **(g) Without the prior approval of the commission, a person may**
- 28 **not, except in an intracorporate transaction, consummate a**
- 29 **transaction described in subsection (a) that causes more than**
- 30 **fifty-one percent (51%) of the then outstanding shares of the**
- 31 **energy company's stock entitled to vote generally in the election of**

the energy company's directors to be beneficially held, directly or indirectly, immediately after the transaction by persons that are different from the persons that beneficially held, directly or indirectly, the shares of the energy company's stock immediately before the transaction.

(h) The commission shall approve a transaction subject to this section unless the commission finds after notice and hearing that a preponderance of the evidence of record in the hearing demonstrates that the energy utility affected by the transaction will lack the financial, managerial, or technical capabilities to provide adequate and reliable retail energy service.

(i) The commission shall enter an order either approving or disapproving a transaction subject to this section not later than one hundred twenty (120) days after the date a person files an application with the commission for approval of the proposed transaction. If the commission fails to issue an order within the one hundred twenty (120) day period allowed the commission under this subsection, the transaction shall be considered approved by operation of law as of the first day following the one hundred twenty (120) day period described in this subsection. If the transaction is approved by the commission, or considered approved under this subsection, the commission may not take action in any state or federal administrative or judicial proceeding to oppose the transaction.

(j) If commission approval of a transaction involving a:

(1) merger, consolidation, reorganization, or union involving an energy company; or

(2) tender offer or contract for the purchase, acquisition, assignment, or transfer of stock of an energy company;

is not required under this section, commission approval of the transaction is not required under any other provision of this title.

(k) Nothing in this chapter:

(1) prevents the holding of an energy company's stock lawfully acquired before July 1, 2002; or

(2) prohibits a merger, consolidation, reorganization, or union involving an energy company if the transaction was lawfully initiated before July 1, 2002.

SECTION 2. IC 8-1-2-109 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 109. (a) This section does not apply to:

(1) a public utility that owns, operates, manages, or controls any plant or equipment within Indiana for the production, transmission, delivery, or furnishing of heat, light, or power; or

(2) a corporation organized or operating under IC 8-1-13.

(b) A public utility that violates this chapter, or fails to perform any duty enjoined upon it, for which a penalty is not otherwise provided, commits a Class B infraction.

SECTION 3. IC 8-1-2-109.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 109.1. (a) This section does not apply when a public utility's violation or failure to comply under subsection (d) is caused by circumstances beyond the control of the public utility, including any of the following:**

- (1) Customer provided equipment.**
- (2) A negligent act or omission of a customer.**
- (3) An emergency situation.**
- (4) An unavoidable casualty.**
- (5) An act of God.**

(b) As used in this section, "public utility" means every corporation, company, partnership, limited liability company, individual, or association of individuals, their lessees, trustees, or receivers appointed by a court, that own, operate, manage, or control any plant or equipment in Indiana for the production, transmission, delivery, or furnishing of heat, light, or power. The term includes a department of public utilities created under IC 8-1-11.1. The term does not include:

- (1) a municipality or political subdivision; or**
- (2) a corporation organized or operating under IC 8-1-13.**

(c) A public utility and every officer of a public utility shall comply with every order or rule of the commission made under the authority of this chapter.

(d) Except as otherwise provided in this chapter, if the commission finds, after notice and hearing, that a public utility has violated this chapter or failed after due notice to comply with:

- (1) a standard of service established by commission rule; or**
- (2) a rate or service requirement of a final and unappealable order of the commission;**

the commission may order the public utility to pay a civil penalty of not more than five thousand dollars (\$5,000) for each violation or failure to comply.

(e) Notwithstanding subsection (d), if the commission finds after notice and hearing that the public utility's violation or failure to comply demonstrates, by a continuing pattern of conduct, a disregard by the public utility of its obligation to remedy the violation or failure to comply found under subsection (d), the commission may impose an additional civil penalty of not more than ten thousand dollars (\$10,000) for each violation or failure to comply.

(f) The commission shall consider the following when determining the appropriateness of the imposition or amount of a civil penalty:

- (1) The size of the public utility.**
- (2) The gravity of the violation or failure to comply.**
- (3) The good faith of the public utility in attempting to remedy the violation or failure to comply or achieve compliance after**

1 receiving notification of the violation or failure.

2 (4) The effect of the civil penalty on the public utility's
3 financial ability to provide adequate and reliable service.

4 (5) If the public utility is a nonprofit company:

5 (A) the effect of the penalty on the company's members
6 and their capitalization of the company; and

7 (B) whether the act or omission causing the violation or
8 failure to comply had been approved or requested by the
9 company's members.

10 In the order imposing the civil penalty, the commission shall make
11 specific findings with respect to the factors described in
12 subdivisions (1) through (5).

13 (g) A public utility may not be subject to both a civil penalty
14 under this section and a penalty agreed to a commission approved
15 settlement agreement for the same violation or failure to comply.
16 If the commission has approved a settlement agreement that
17 includes penalties or remedies for noncompliance with specific
18 provisions of the settlement agreement, the penalties provided in
19 this section do not apply to those instances of noncompliance
20 during the life of the settlement agreement.

21 (h) Notwithstanding section 112 of this chapter, the civil
22 penalties provided for in this section for each violation or failure
23 to comply by a public utility may not be multiplied or increased
24 because of the number of customers affected or the length of time
25 service is affected. Only one (1) violation or failure to comply per
26 day may be attributed to a public utility as a result of a particular
27 condition, system outage, storm, act, omission, event, decision, or
28 other cause occurring on that day.

29 SECTION 4. IC 8-1-2-115 IS AMENDED TO READ AS
30 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 115. The commission
31 shall inquire into any neglect or violation of the statutes of this state or
32 the ordinances of any city or town by any public utility doing business
33 therein, or by the officers, agents, or employees thereof, or by any
34 person operating the plant of any public utility, and shall have the
35 power, and it shall be ~~its~~ **the commission's** duty to enforce the
36 provisions of this chapter, as well as all other laws, relating to public
37 utilities. Any forfeiture or penalty provided in this chapter shall be
38 recovered, and suit therein shall be brought in the name of the state of
39 Indiana ~~in the circuit or superior court where the public utility has its~~
40 ~~principal place of business:~~ **by the attorney general in a court that**
41 **has jurisdiction.** Complaint for the collection of any such forfeiture
42 may be made by the commission or any member thereof, and, when so
43 made, the action so commenced shall be prosecuted by the **attorney**
44 ~~general. counsel.~~

45 Page 2, between lines 16 and 17, begin a new paragraph and insert:

46 "SECTION 2. IC 8-1-3-11 IS AMENDED TO READ AS
47 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 11. Nothing in this

chapter contained shall be construed to affect the duty or power of:

(1) the commission to commence ~~and prosecute~~ enforcement proceedings in its own name; or

(2) the attorney general to prosecute enforcement proceedings in the name of the state of Indiana in the circuit or superior courts of this state;

pursuant to the provisions of **IC 8-1-2-115, IC 8-1-13-41.2, or** other statutes, except insofar as such proceedings may interfere with the jurisdiction of the court of appeals or supreme court in a cause then pending on appeal."

Page 7, between lines 14 and 15, begin a new paragraph and insert:

"SECTION 3. IC 8-1-13-41.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 41.1. (a) The authority granted to the commission under this section is in addition to the commission's authority to act under section 41 of this chapter.**

(b) This section does not apply when a corporation's violation or failure to comply under subsection (d) is caused by circumstances beyond the control of the corporation, including any of the following:

(1) Customer provided equipment.

(2) A negligent act or omission of a customer.

(3) An emergency situation.

(4) An unavoidable casualty.

(5) An act of God.

(c) A corporation subject to the commission's jurisdiction under this chapter and every officer of the corporation shall comply with every order or rule of the commission made under the authority of this chapter.

(d) Except as otherwise provided in this chapter, if the commission finds after notice and hearing that a corporation has violated this chapter or failed after due notice to comply with:

(1) a standard of service established by commission rule; or

(2) a rate or service requirement of a final and unappealable order of the commission;

the commission may order the corporation to pay a civil penalty of not more than five thousand dollars (\$5,000) for each violation or failure to comply.

(e) Notwithstanding subsection (d), if the commission finds after notice and hearing that the corporation's violation or failure to comply demonstrates, by a continuing pattern of conduct, a disregard by the corporation of its obligation to remedy the violation or failure to comply found under subsection (d), the commission may impose an additional civil penalty of not more than ten thousand dollars (\$10,000) for each violation or failure to comply.

(f) The commission shall consider the following when

determining the appropriateness of the imposition or amount of a civil penalty:

- (1) The size of the corporation.
- (2) The gravity of the violation or failure to comply.
- (3) The good faith of the corporation in attempting to remedy the violation or failure to comply or achieve compliance after receiving notification of the violation or failure.
- (4) The effect of the civil penalty on the corporation's members and their capitalization of the corporation.
- (5) Whether the act or omission causing the violation or failure to comply had been approved or requested by the corporation's members.

In the order imposing the civil penalty, the commission shall make specific findings with respect to the factors described in subdivisions (1) through (5).

(g) A corporation may not be subject to both a civil penalty under this section and a penalty agreed to in a commission approved settlement agreement for the same violation or failure to comply. If the commission has approved a settlement agreement that includes penalties or remedies for noncompliance with specific provisions of the settlement agreement, the penalties provided in this section do not apply to those instances of noncompliance during the life of the settlement agreement.

(h) Notwithstanding IC 8-1-2-112, the civil penalties provided for in this section for each violation or failure to comply by a corporation may not be multiplied or increased because of the number of customers affected or the length of time service is affected. Only one violation or failure to comply per day may be attributed to a corporation as a result of a particular condition, system outage, storm, act, omission, event, decision, or other cause occurring on that day.

SECTION 4. IC 8-1-13-41.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 41.2. The commission shall inquire into any neglect or violation of the statutes of Indiana or the ordinances of any city or town by any corporation organized under this chapter and doing business in the state, city, or town, whichever applies, by the officers, agents, or employees of the corporation, or by any person operating the plant of any corporation, and the commission shall have the power and duty to enforce the provisions of this chapter, as well as all other laws, relating to corporations regulated under this chapter. Any forfeiture or penalty provided in this chapter shall be recovered and any suit related to the forfeiture or penalty shall be brought in the name of the state of Indiana by the attorney general in a court that has jurisdiction. Complaint for the collection of any forfeiture or penalty may be made by the commission or any commission member and, when made, the action commenced shall be prosecuted by the attorney general."

- 1 Renumber all SECTIONS consecutively.
 (Reference is to EHB 1116 as printed February 20, 2002.)

Senator SERVER